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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 30th day of June, 1998

BEFORE

THE HON'BLE MR. JUSTICE V.P. MOHAN KUMAR

WRIT PETITION Nos. 29718 OF 1994

C/w

WRIT PETITION No. 21981 OF 1994

W.P.No. 29718/94

BETWEEN :

Panaje Co-operative Agricultural  
Bank Limited,  
Post Panaje - 574 210  
Puttur Taluk,  
Dakshina Kannada Dist,  
Represented by its  
Secretary  
Mr. Venkatramana Bhat

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... PETITIONER

(Sri R. Gururajan, Advocate)

A N D :

1. Sri K. Thimmappa Naika,  
S/o Poovaiah Naika,  
Kote of Panajohalli,  
Post Panaje,  
Puttur Taluk,  
Dakshina Kannada Dist.
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2. The Presiding Officer,  
Labour Court,  
Mangalore

.. RESPONDENTS

(Sri M. Subramanya Bhat for  
Sri K. Subba Rao, Advocate for R - 1)

W.P.No. 21981/94

BETWEEN :

K. Thimmappa Naika,  
son of Poovaiah Naika,  
aged about 53 years,  
residing at Kote of Panajahalli,  
Post Panaje,  
Puttur Taluk,  
Dakshina Kannada District

.. PETITIONER

(Sri K. Subba Rao, Advocate)

A N D :

1. The Management of M/s. Panaje  
Co-operative Agricultural Bank  
Limited, represented by its  
Secretary, Post : Panaje - 574 210,  
Puttur Taluk,  
Dakshina Kannada District

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2. The Presiding Officer,  
Labour Court,  
Mangalore,  
Dakshina Kannada District

.. RESPONDENTS

(Sri. R. Gururajan for R - 1  
Sri N.P. Singri, H.C.G.P. for R-2)

Writ Petition No. 29718/94 filed under Article 226 of the Constitution of India, praying to; ISSUE a writ of certiorari or any other appropriate writ quashing the impugned Award dated 29-12-1993 made in Reference ID(LCM) No. 226 of 1986 on the file of the Presiding Officer, Labour Court, Mangalore (Vide Annexure-A), etc.

Writ Petition No. 21981/94 filed under Article 226 of the Constitution of India, praying to; ISSUE A WRIT OF CERTIORARI or any other appropriate writ or order quashing the portion of the Award dated 29th December, 1993, made in Reference ID (LCM) No. 226 of 1986 on the file of the Labour Court, Mangalore, a certified copy of which is produced as ANNEXURE -F, by which the petitioner has been denied full backwages, as the said portion of the Award is arbitrary and suffers from errors which are apparent on the face of records; ISSUE A WRIT OF MANDAMUS or any other appropriate writ or order or direction directing the first Respondent Bank to pay the Petitioner full backwages from the date of his illegal termination till the date of his reinstatement, etc.

These Writ Petitions coming on for Hearing,  
this day, the Court made the following :

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O R D E R

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The award passed by the Labour Court in Reference No.226/86 is challenged both by the Management as well as the worker. The Management is a Co-operative Society. The worker was employed as a Night Watchman having been appointed in July, 1977. While so, it is alleged that the Assistant Registrar of Co-operative Societies intimated the Society that in the staff pattern of the Society, there is no post of a Night Watchman and accordingly, it is alleged that the Society terminated the services of the worker on 30-3-1985. The worker raised a dispute which was referred to the Labour Court for adjudication. There was no domestic enquiry held against the worker. The only defence taken by the Society is that the Assistant Registrar of Co-operative Societies directed the Society to terminate the services of the worker. The Labour Court examined the propriety and justification of the dismissal and held that the dismissal is illegal. It, therefore, set aside the order of dismissal and called upon the Management to reinstate the worker. It awarded 9 months' wages as backwages to the worker. This award

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is challenged by the Management in so far as it orders reinstatement and by the worker in so far as it declines backwages.

2. I have heard Mr.R.Gururajan, learned counsel for the Management, and Mr.Subramanya Bhat, learned counsel for the worker. I am not satisfied that the award passed by the Labour Court calls for any interference. The appointment of the worker in July, 1977 is not disputed. The worker has continuously worked for a period of 240 days before his termination. This is also not disputed. The worker having worked for 240 days has acquired a right under Section 25-F of the I.D.Act. Since the provisions of Section 25-F have not been complied with by the Management, the termination is illegal and the Labour Court was justified in holding that the termination is illegal and calling upon the Management to reinstate the worker.

3. The only defence raised by the Society is that there was a direction by the Assistant Registrar of Co-operative Societies to terminate the services of the worker. It is to be remembered that the Assistant Registrar has no power to interfere with the running of the

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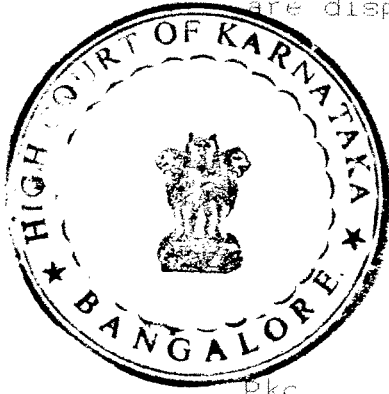
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Society as long as the appointments are validly made. An Assistant Registrar cannot issue any direction to terminate the services of a worker. The right acquired by a worker under the industrial law will not be set at naught by virtue of the orders passed by the authorities in exercise of the powers under the Co-operative Societies Act. Therefore, the Management was not justified in terminating the services of the worker and the Labour Court was justified in directing reinstatement of the worker.

4. As regards backwages is concerned, the Labour Court has considered the question as to whether the worker be awarded backwages. It thought it fit that it is sufficient if 9 months' backwages is awarded and that award has been made. Besides, the worker has not produced any evidence to show that he was unemployed and that he has not earned any livelihood entitling him to claim backwages. Though there is no evidence that the worker was employed or not, taking into account all the

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circumstances, I order that the worker will be entitled to 2 years' backwages including the amount already paid. Both the writ petitions are disposed of as above.



Sd/-  
JUDGE